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Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-107

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner*,

v.

ERIE LACKAWANNA RAILWAY COMPANY and THEODORE BENAZET, *Respondents*.

BRIEF FOR RESPONDENT ERIE LACKAWANNA RAILWAY COMPANY

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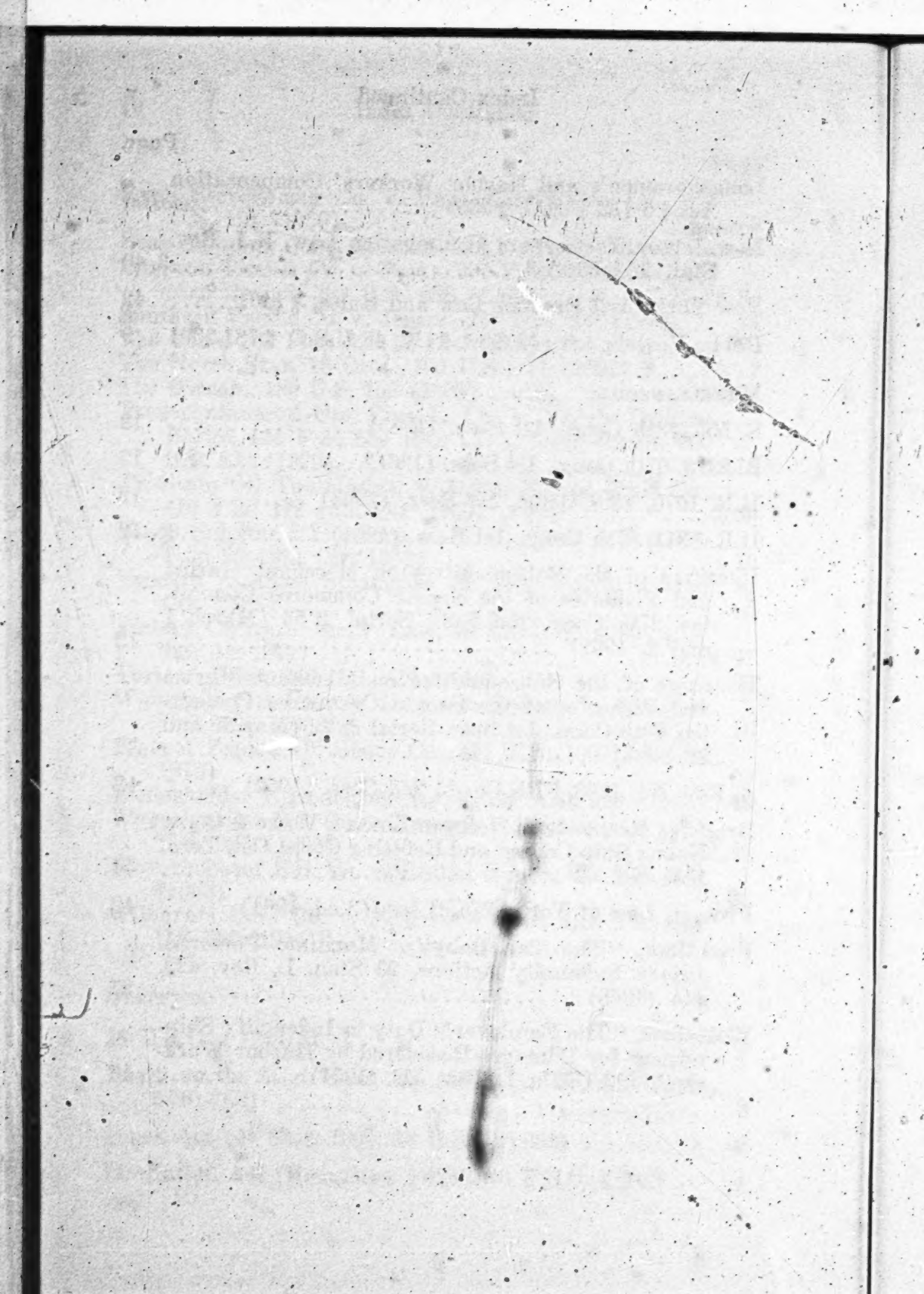

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ERIE LACKAWANNA RAILWAY COMPANY and THEODORE BENAZET, *Respondents*.

BRIEF FOR RESPONDENT ERIE LACKAWANNA RAILWAY COMPANY

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (Cooper, J.) is reported at 315 F. Supp. 357 and is printed at A-79. The unanimous opinion and judgment of the United States Court of Appeals for the Second Circuit affirming the District Court order is reported at 442 F.2d 694 and is printed at A. 94, 102.

JURISDICTION

The decision of the Court of Appeals affirming the order of the District Court was entered on April 23, 1971. A Petition for a Writ of Certiorari was filed with this Court on July 22, 1971. Certiorari was granted on October 26, 1971. The jurisdiction of this Court is conferred under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether, under the factual circumstances of this case, *Halcyon Lines* v. *Haenn Ship Ceiling & Refitting Corp.*, 342 U.S. 282 (1952), should be overruled, thereby disrupting an efficient and familiar system of allocating losses in maritime personal injury cases which has the evident approval of Congress.

2. Whether Petitioner should be permitted contribution from Respondent despite the holding in *Halcyon*, established rules of contribution, current principles of admiralty law, and the provisions of duly enacted federal legislation.

3. Whether state rather than federal law governs as to the rule of contribution in maritime non-collision cases.

STATUTE INVOLVED

The Longshoremen's and Harbor Workers' Compensation Act, § 5 (33 U.S.C. § 905), provides:

> The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury

> or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

STATEMENT

Theodore Benazet,[1] an employee of Respondent Erie Lackawanna Railway ("Erie"), was injured on July 30, 1964, when he fell to the deck of a carfloat while working on a boxcar owned by Petitioner Atlantic Coast Line Railroad Company ("Atlantic"). A-8, 43. At the time of the accident, Benazet, a yard brakeman, was attempting to tighten a handbrake on Atlantic's boxcar, which was standing on Erie's carfloat moored in New York harbor off the New Jersey shore. A-22, 43.

Benazet brought suit against Atlantic in state court. A-7. The action was removed to federal court on diversity of citizenship (A-4), and Atlantic impleaded

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[1] This Brief is filed on behalf of Respondent Erie Lackawanna Railway Company only. Theodore Benazet was interested in the proceedings in the Court of Appeals, since issues such as contributory negligence and the size of the jury verdict were raised, but those issues are not involved here. We presume, therefore, that Benazet has no interest in the outcome of Atlantic's petition in this Court. Atlantic, however, has not filed a Rule 21(4) notification of its belief that Benazet has no interest in the outcome herein.

Erie on the ground that Erie was negligent for failure to inspect properly and that Atlantic was entitled to contribution. A-12. (Atlantic also claimed originally a right to indemnity but dropped this claim at the end of the trial. A-85 n. 2.)

As District Judge Cooper noted in his opinion (A-79-80), the facts evidently found by the jury were that when Benazet applied the handbrake, a rotted footboard gave way, and he put his weight against the handbrake assembly which in turn broke away from the car as a result of some defective brackets. The defective condition of the brackets required "years to develop," and a repair job had been attempted in "a highly improper procedure". A-80-81; and see A-40-41. The evidence failed to show who had performed this repair job. One expert testified that the rotting and deterioration of the wooden footboard took "at least two years" to develop. A-30.

During the two years prior to the accident, this particular boxcar had been in the possession of 49 different railroads. Pl. Ex. 4; CA App. 367b. It had been in the possession of one railroad nine times, Atlantic eight times, one railroad six times, one railroad five times, four railroads—including Erie—four times each, five railroads three times each, eight railroads twice each, and 28 railroads once each. The boxcar had left Atlantic's possession less than two months prior to the accident, had then been in the possession of nine different railroads, and had been in Erie's possession for only three days. A-26-27, 81; CA App. 367b.

Federal law requires the owning railroad to examine safety appliances, including the braking system, when such a railroad receives its cars back onto its line. The

defect in the welding on Atlantic's car as well as the rotten floorboard were visible and should have been perceived through a proper inspection when Atlantic received the car on June 1, 1964. A-35, 41-42.

Late in the trial, the District Court realized that maritime law might govern this case, since Benazet's injury occurred on a carfloat located on navigable waters. See A-52. Although the District Court recognized that maritime law would not permit contribution between Erie and Atlantic (A-54), it nevertheless instructed the jury as follows, attempting to avoid any unnecessary retrial in the event it was determined that maritime law did not apply:

> Now, the law provides that where an injury is suffered by any person as a result of negligence of joint tortfeasors and the person suffering an injury recovers a money judgment for such injury against one of the joint tortfeasors, that defendant shall be entitled to recover contribution from the other tortfeasor, the other person who played a part in the production of the negligence. [A-59.]

So instructed, the jury found that both Atlantic and Erie were negligent, and that Erie's negligence was "a substantial factor" in bringing about Benazet's injuries. A-61-62. The jury was not asked and did not find whether Atlantic's negligence was "a substantial factor" in bringing about Benazet's injuries, nor was any percentage of negligence assigned to either Atlantic or Erie.[2] However, as the District Court specifi-

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[2] Erie's counsel moved subsequent to trial, *inter alia*, for a dismissal of the complaint as to Erie on the ground that "contribution is not allowed under maritime law in cases such as this," and "even if New Jersey law were applied, there would be no con-

cally found, "*** Atlantic was either the cause or knew or should have known of the existence of the defects in the brackets of the car it placed in commerce and *** there was no superceding cause of the accident." A-81. Erie's negligence consisted solely of its failure to discover the defects through inspection. A-59-61.

The District Court upheld the jury's award of $200,000 as against Atlantic and dismissed Atlantic's claim for contribution against Erie. A-79. The Court of Appeals unanimously affirmed. A-94.

ARGUMENT

1. The problem of contribution in non-collision cases is peculiarly one for Congress.

We do not in any way question the *power* of this Court to fashion new rules governing maritime cases. We do question, however, the wisdom of exercising that power in this case to establish a new rule of contribution in non-collision, maritime personal injury cases, particularly in the light of Congress' refusal to change the rule long since established by this Court that no such contribution exists.

Almost twenty years ago this Court was asked to hold that there was an established right to contribution between tortfeasors in the types of cases just described. It refused to do so. *Halcyon Lines* v. *Haenn Ship*

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tribution where the incident falls within the Longshoremen's and Harbor Workers' Compensation Act". In the alternative, he moved for judgment in favor of Erie on the ground that Atlantic "was the primary party causing negligence to the degree it would have been found liable in indemnity to" Erie. A-64-65. Ruling that contribution was not permitted, the District Court did not have to reach the latter contention.

Ceiling & Refitting Corp., supra.[3] The Court said that whether such a right should exist must "await congressional action," since Congress had theretofore "stopped short of approving the rule of contribution here urged ***." 342 U.S. at 285, 287.

Significantly, the Court pointed out:

> Many groups of persons with varying interests are vitally concerned with the proper functioning and administration of all these Acts as an integrated whole. We think that legislative consideration

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[3] Atlantic continues in its Brief to portray *Halcyon* as deferring (Ptr's Brief, p. 5) or putting aside (*id.* at 9) the issue of contribution in non-collision cases. The Court of Appeals correctly pointed out that *Halcyon* "expressly held" no such right of contribution to exist. A-98-99; and see the District Court's ruling at A-90-91. An admiralty rule of law can be stated positively or negatively, of course, and it is nonetheless a rule of law. *Just* v. *Chambers*, 312 U.S. 383, 391 (1941). Moreover, this Court itself has refuted Atlantic's characterizations. In *Italia Societa* v. *Oregon Stevedoring Co.*, 376 U.S. 315, 320 (1964), the Court said that *Halcyon* "held that maritime principles of contribution between joint tortfeasors prevailing in collision cases were not applicable in suits for contribution by a shipowner against stevedoring companies." In *Pope & Talbot, Inc.* v. *Hawn*, 346 U.S. 406, 408 (1953), the Court stated that in *Halcyon*, "we held that contribution could not be exacted under circumstances like those here involved." And in *Federal Marine Terminals, Inc.* v. *Burnside Shipping Co.*, 394 U.S. 404, 417-418 (1969), the Court described *Halcyon* as a decision "that we would not 'fashion new judicial rules of contribution' between the shipowner and the stevedoring contractor as joint tortfeasors."

Moreover, the common law refused to permit contribution between joint tortfeasors. See *Simpson Timber Co.* v. *Parks*, 390 F.2d 353, 356 (9th Cir.), *cert. denied*, 393 U.S. 858 (1968). Admiralty had permitted contribution in collision cases, *e.g.*, The *North Star*, 16 Otto (106 U.S.) 17 (1882), but not expressly in non-collision cases. *Halcyon Lines* v. *Haenn Ship Ceiling & Refitting Corp., supra*, 342 US. at 284.

> and action can best bring about a fair accommodation of the diverse but related interests of these groups. The legislative process is peculiarly adapted to determine which of the many possible solutions to this problem would be most benefical in the long run. A legislative inquiry might show that neither carriers, shippers, employees, nor casualty insurance companies desire such a change to be made. The record before us is silent as to the wishes of employees, carriers, and shippers; it only shows that the Halcyon Line is in favor of such a change in order to relieve itself of a part of its burden in this particular lawsuit. [*Id.* at 286.]

The Court went on to say:

> Should a legislative inquiry convince Congress that a right to contribution among joint tortfeasors is desirable, there would still be much doubt as to whether application of the rule or the amount of contribution should be limited by the Harbor Workers' Act, or should be based on an equal division of damages, or should be relatively apportioned in accordance with the degree of fault of the parties. [*Id.* at 286-287; footnote deleted.]

Both in these and other portions of its opinion, the Court thus made two important points. First, Congress might or might not want to change the rule that no right of contribution exists, depending upon legislative investigation and what advocates and opponents of such a rule were able to show. Secondly, the solution was peculiarly one for Congress in view of the fact that application of the rule could be limited by other maritime acts, and even if the rule were changed and applied, further decisions would have to be made, such as how contribution was to be apportioned and in what ways the new rule would be "integrated with other

acts" in the maritime field.[4] This point was reinforced just this Term when the Court, in another maritime case, *Victory Carriers, Inc.* v. *Law*,[5] refused, "in the absence of explicit congressional authorization," to affirm a Court of Appeals decision which would "raise a host of new problems."

Halcyon has not stood alone, unreviewed over the ensuing years. In *Pope & Talbot, Inc.* v. *Hawn, supra,* for example, not only did the Court specifically reaffirm *Halcyon* but it even refused to reduce the shipowner's liability by the amount the longshoreman had received from his employer as compensation, although the longshoreman had agreed to refund these payments out of his recovery from the shipowner, because to allow such a reduction "would be the substantial equivalent of contribution which we declined to require in the *Halcyon* case." 346 U.S. at 412. And as recently as 1969, the Court was careful in a unanimous opinion by Mr. Justice Stewart to demonstrate why its ruling was "in no wise a departure from our decision in *Halcyon* ***." *Federal Marine Terminals, Inc.* v. *Burnside Shipping Co., supra,* 394 U.S. at 417-418.[6]

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[4] These acts include not only the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. § 901 *et seq.*) (hereinafter "Longshoremen's Act"), which, as we show later, is directly involved in the decision here, but also the Jones Act (41 Stat. 1007; 46 U.S.C. § 688), the Public Vessels Act (43 Stat. 1112, 46 U.S.C. §§ 781-790), the Death on the High Seas Act (41 Stat. 537, 46 U.S.C. §§ 761-768), the Limitation Act (Rev. Stat. § 4283, 46 U.S.C. § 183), and a number of other statutes relating to maritime accidents.

[5] 40 U.S.L.W. 4059, 4063 (U.S. Dec. 14, 1971).

[6] See also *Madruga* v. *Superior Court,* 346 U.S. 556, 563 (1954); *Wilburn Boat Co.* v. *Firemen's Fund Ins. Co.,* 348 U.S. 310, 320 (1955); *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Co.,* 350 U.S.

The extent to which the *Halcyon* doctrine has become embedded in admiralty law is also illustrated by a very recent case, *In re Standard Oil Co.*, 325 F. Supp. 388 (N.D. Cal. 1971). Standard Oil sought contribution from the United States following its liability for wrongful deaths resulting from a fire involving a Standard Oil tug and barge and a Coast Guard patrol boat. The District Court found the liability of the United States and Standard Oil to be "based upon equal mutual fault of both parties," *id.* at 389, but denied contribution, in reliance on *Halcyon*, citing also *Pope & Talbot, Inc.* v. *Hawn, supra,* and *Federal Marine Terminals, Inc.* v. *Burnside Shipping Co., supra.* Noting that *Halcyon* had been consistently adhered to in the Ninth Circuit,[7] the court observed: "Based upon subsequent Supreme Court decisions, it has become a well-recognized rule of maritime law." *Id.* at 390.

The *Halcyon* doctrine has been honored time and again,[8] even by its detractors.[9] As we point out below,

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124, 133 (1956); *Kermarec* v. *Compagnie Generale Transatlantique,* 358 U.S. 625, 630 n.5 (1959); *Weyerhaeuser S.S. Co.* v. *United States,* 372 U.S. 597, 603 (1963); *Italia Societa* v. *Oregon Stevedoring Co., supra,* 376 U.S. at 320-322.

[7] *E.g., Union Sulphur & Oil Corp.* v. *W. J. Jones & Son,* 195 F.2d 93 (9th Cir. 1952); *Amerocean S.S. Co.* v. *Copp,* 245 F.2d 291 (9th Cir. 1957); *Mickle* v. *The Henriette Wilhelmine Schulte,* 188 F.Supp. 77 (N.D. Cal. 1960).

[8] *E.g., Transcontinental Gas Pipe L. Co.* v. *Mobile Drilling Barge,* 424 F.2d 684 (5th Cir.), *cert. denied,* 400 U.S. 832 (1970); *Grigsby* v. *Coastal Marine Ser.,* 412 F.2d 1011, 1039 (5th Cir. 1969), *cert. denied,* 396 U.S. 1033 (1970); *Ammesmaki* v. *Interlake Steamship Co.,* 342 F. 2d 627 (7th Cir. 1965); *Read* v. *United States,* 201 F.2d 758 (3d Cir. 1953); *Connors* v. *Brown S.S. Co.,* 115 F.Supp. 775 (W.D.N.Y. 1953). See also cases at note 7, *supra,* and note 11, *infra.*

[9] *E.g., McLaughlin* v. *Trelleborgs Angfartygys,* 408 F.2d 1334 (2d Cir.), *cert. denied,* 395 U.S. 946 (1969).

Erie does not owe contribution even under the Fifth Circuit view of *Halcyon*—that contribution is permitted unless one party is immune from suit by statute[10]—but that view is clearly erroneous, as recognized by the court in *In re Standard Oil Co., supra. Halcyon* has consistently been held to bar contribution, even where, contrary to the Fifth Circuit view, neither "tortfeasor" is protected from liability by statute.[11]

Despite this repeated reliance on *Halcyon,* and despite the clear invitation by the Court in *Halcyon* and subsequent cases to those who advocate a change in the rule to step forward and present their case, they have failed to do so. Those individuals, organizations, companies, labor groups, government agencies and federal departments most knowledgeable in the field and most likely to be concerned about the injustices, anomalies and inconsistencies which Atlantic alleges to exist have in fact shown no concern at all about *Halcyon.* The annual reports of the Maritime Administration, for example, reveal that at no time since 1952 has the Administration discovered any of the dire consequences alleged by Atlantic. The Interior, Treasury, Justice and Commerce Departments, the International Longshoremen's Association, and the myriad other groups which regularly present their views to Congress on issues of importance in the maritime field have not urged that *Halcyon* be overruled, as surely they would have if the picture were as Atlantic paints it.

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[10] *Horton & Horton, Inc.* v. *T/S J. E. Dyer,* 428 F.2d 1131 (5th Cir. 1970), *cert. denied,* 400 U.S. 993 (1971).

[11] *E.g., Transcontinental Gas Pipe L. Co.* v. *Mobile Drilling Barge, supra; Davis* v. *Associated Pipe Line Const. Co.,* 305 F.Supp. 1345 (W.D. La. 1968), *aff'd,* 418 F.2d 920 (5th Cir. 1969), *cert. denied,* 397 U.S. 988 (1970); *Ardoin* v. *Union Oil Co.,* 226 F.Supp. 192 (W.D. La. 1964).

Bills *have* been introduced in Congress which would have had the effect of changing the *Halcyon* rule and allowing contribution in cases such as this one.[12] See, by

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[12] S. 2313, a bill: "to unify apportionment of liability in cases of collision between vessels, and related casualties," was introduced in the 1st Session of the 87th Congress by Senator Magnuson on July 26, 1961, and was referred to the Commerce Committee's Subcommittee on Merchant Marine and Fisheries. Hearings were held by the Subcommittee on March 1 and 2, 1962. 87th Cong., 2nd Sess. Serial #53. On March 23, 1962, the bill was considered in executive session by the full Committee and ordered reported favorably with amendments not relevant here. The bill was reported by Senator Bartlett on June 15, 1962, with the title, "Unifying Apportionment of Liability in Collisions and Other Maritime Casualties." S. Rep. No. 1603, 87th Cong., 2nd Sess. (1962). On September 28, 1962, consideration of the bill was indefinitely postponed.

H.R. 7911, the companion bill to S. 2313 which shared its title, was introduced in the 1st Session of the 87th Congress by Congressman Garmatz on June 28, 1961, and was referred first to the Committee on Merchant Marine and Fisheries and then to the Subcommittee on Merchant Marine. Comments were sought and received from the General Accounting Office and the Departments of the Treasury, Commerce, Justice and State. The Subcommittee took no further action on the bill.

S. 555 (see Appendix A hereto) was similar in all significant aspects to S. 2313 of the 87th Congress, as amended by the Commerce Committee. S. 555 was introduced in the 1st Session of the 88th Congress by Senator Bartlett on January 28, 1963, and referred to the Subcommittee on Merchant Marine and Fisheries of the Commerce Committee. Hearings were held on May 20 and 22, 1963 (88th Cong., 1st Sess. Serial #22), and on December 9, 1963, the bill was considered in executive session by the Subcommittee and reported favorably to the full Committee with an amendment in the nature of a substitute. *The amendment changed the bill so as to make it applicable solely to collision cases.* The bill, as reported, was considered by the full Committee in executive session on December 10, 1963, but no further action was taken.

H.R. 1070 was identical in language to H.R. 7911 of the 87th Congress and similar to S. 555 of the 88th Congress. H.R. 1070 was introduced in the 1st Session of the 88th Congress by Congressman Garmatz on January 9, 1963, and referred to the Com-

way of example, Sections 4(a), 4(b) and 9 of S. 555, printed as Appendix A to this Brief. Significantly, however, the only committee report available[13] indicates that Congress was *not* concerned about the *Halcyon* rule, despite the plain language of these bills. Even more to the point, the *bills were never even reported out of committee, much less approved by Congress.*

Thus, whether we treat the history of these bills as evidence that Congress is disinterested in changing the present rule or as an outright rejection by Congress of any change, the message is clear: on a question which this Court said "the legislative process is peculiarly adapted to determine", Congress has answered, and the answer is that the present state of law should remain in effect.[14]

That answer is particularly appropriate where the affected statutes must all be made to interlock (see note 4, *supra*) and where Atlantic's claims would affect the intricate relationships between a myriad group of maritime personnel and businesses, including longshoremen, crewmen, shipowners, stevedoring com-

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mittee on Merchant Marine and Fisheries. Comments were sought and received from the General Accounting Office and the Departments of the Treasury, Commerce, Justice and State. The bill was not even referred to a Subcommittee, and no further action was taken.

[13] See n. 12, *supra*.

[14] It is important to emphasize, as mentioned in n. 12, *supra*, that while these bills originally would have applied to both collision and non-collision cases, they were specifically changed in committee to apply only in collision cases. Thus, there has been congressional recognition of the very distinction between collision and non-collision cases that Atlantic wants this Court to abolish in the area of maritime contribution.

panies, bareboat charterers, cargo consignees and others. As the Court said in *Victory Carriers, Inc.* v. *Law, supra,* "Claims like these are best presented in the legislative forum, not here." 40 U.S.L.W. at 4063. Reaffirming the important role of Congress in maritime personal injury matters, the Court there declined to extend general admiralty jurisdiction to accidents on land.[15] The Court's conclusion in the *Law* case is equally apt here:

> [I]f denying federal remedies to longshoremen injured on land is intolerable, Congress has ample power under Articles I and III of the Constitution to enact a suitable solution. [*Id.* at 4064.]

Deference to Congress is also appropriate when the Court is faced with facts like those in the instant case. While maritime law clearly governs,[16] this is hardly the typical maritime personal injury case. The injured worker here was a railroad yardman—not a seaman or a longshoreman—and all the other involved parties were railroad companies—not shipowners or stevedoring companies. Despite Atlantic's understandable wish to dilute its obligation, this is not a proper setting for wholesale changes in established maritime doctrine.

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[15] Since the injury was not caused by the "vessel," the Admiralty Extension Act, 62 Stat. 496, 46 U.S.C. § 740, did not apply. *Victory Carriers, Inc.* v. *Law, supra,* 40 U.S.L.W. at 4062.

[16] That this was clearly a maritime accident covered by the Longshoremen's Act, despite Benazet's railroad employment and activities, was settled in *Pennsylvania R.R. Co.* v. *O'Rourke,* 344 U.S. 334 (1953). See also *Kermarec* v. *Compagnie Generale, supra,* 358 U.S. at 628, and *Victory Carriers, Inc.* v. *Law, supra.*

2. The present rule is the correct one.

Even if this Court were to make an independent review of the contribution rule, rather than leaving the matter to Congress, we respectfully submit that the proper conclusion to be reached by the Court is that there should be no contribution among tortfeasors in non-collision, maritime personal injury cases. First, this result is entirely consistent with prior case law. Secondly, it achieves the end result sought by the Court—to place maximum responsibility for correcting defects upon the party most able to do so. Thirdly, allowing contribution would clearly violate Section 5 of the Longshoremen's Act if Erie actually had to pay any amount to Atlantic. And finally, a holding that contribution is owed in this case would be an empty gesture in the light of Erie's almost certain right to obtain full indemnity from Atlantic.

(a) An absence of contribution is fully consistent with prior case law.

One problem with this case as a context for drastic change in maritime doctrine is the difficulty of placing the parties into the typical maritime setting. Found initially liable for its defective boxcar, Atlantic, though negligent, assumes the same position as the non-negligent shipowner initially liable for unseaworthiness. Like the non-negligent shipowner, the negligent Atlantic seeks to shift liability to a third party or to dilute its liability. As recognized below, however, this Court's prior rulings are either inconsistent with such a result or are clearly distinguishable from it.

Thus, the rulings which have established liability on the part of a shipowner to a longshoreman for unseaworthiness have not involved the liability of third

parties, whether by contribution, indemnity, or otherwise.[17] One case establishing liability on the part of a shipowner to a stevedoring company not only failed to award contribution but specifically distinguished the contribution situation.[18] All of the cases setting forth the liability of stevedoring companies to shipowners or vessels have been indemnity rather than contribution cases,[19] and they have carefully noted the important differences between the two types of recovery. For example, as the Court said in *Italia Societa* v. *Oregon Stevedoring Co., supra,* 376 U.S. at 321, " *** recovery of contribution between joint tortfeasors and recovery of indemnity for breach of warranty proceed on two wholly distinct theories and produce disparate results."[20] Contribution is imposed by law and is measured by relative fault or is shared equally, whereas indemnity is not necessarily affected

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[17] *E.g., Seas Shipping Co.* v. *Sieracki,* 328 U.S. 85 (1946); *Pope & Talbot, Inc.* v. *Hawn, supra; Jackson* v. *Lykes Bros. Steamship Co.,* 386 U.S. 731 (1967).

[18] *Federal Marine Terminals, Inc.* v. *Burnside Shipping Co., supra,* 394 U.S. at 417-418.

[19] *E.g., Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Co., supra; Crumady* v. *The Joachim Hendrik Fisser,* 358 U.S. 423 (1959); *Waterman S.S. Corp.* v. *Dugan & McNamara, Inc.,* 364 U.S. 421 (1960); *Italia Societa* v. *Oregon Stevedoring Co., supra.* The one case establishing liability on the part of a stevedoring company to a longshoreman did so on the basis of unseaworthiness. *Reed* v. *The Yaka,* 373 U.S. 410 (1963).

[20] The Court cited *American Stevedores* v. *Porello,* 330 U.S. 446 (1947); *Crawford* v. *Pope & Talbot, Inc.,* 206 F.2d 784 (3d Cir. 1953); *Rich* v. *United States,* 177 F.2d 688 (2d Cir. 1949); *McFall* v. *Compagnie Maritime Belge, S.A.,* 304 N.Y. 314, 107 N.E.2d 463 (1952), and Weinstock, "The Employer's Duty to Indemnify Shipowners for Damages Recovered by Harbor Workers," 103 U. Pa. L. Rev. 321 (1954).

or defeated by the shipowner's negligence. And, said the Court, the stevedoring company's obligation which results in indemnity is not the same as that which results in contribution. And see *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Corp., supra,* 350 U.S. at 133; *Federal Marine Terminals, Inc.* v. *Burnside Shipping Co., supra,* 394 U.S. at 421 n. 25. Therefore, Atlantic's reliance on indemnity cases is clearly misplaced.[21]

(b) A refusal to permit contribution achieves the best results.

While at first glance it might seem only fair and just that tortfeasors share in a negligence recovery by an injured worker, the fact is that such a result fails to further, and in fact frustrates, the basic purpose of the various safety statutes and this Court's decisions. In this regard, it is important to remember that *Halcyon* is more than a case which has beeen followed and applied by the courts for twenty years. The *Halcyon* rule against contribution has also become a premise for the still developing maritime system for preventing, as well as compensating for, injuries to harborworkers and longshoremen and allocating the economic losses

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[21] *Moragne* v. *States Marine Lines,* 398 U.S. 375 (1970), relied upon by Atlantic, does not argue for drastic judicial action here. In *Moragne,* the Court overruled an 1886 decision holding that admiralty recognized no wrongful death remedy. The overruled decision had frozen admiralty to the general state of the law in the 1880's and had worked clear injustice by denying a remedy to obviously injured parties. To the contrary, *Halcyon* was an outgrowth of, and is a bulwark for, the expansive remedy for unseaworthiness, and has been the foundation for a comprehensive system of allocating personal injury losses in a hazardous industry. To paraphrase a recent statement by the Court (*Nacirema Operating Co.* v. *Johnson,* 396 U.S. 212, 224 (1969)), the invitation to change the *Halcyon* rule "must be addressed to Congress, not to this Court."

when they occur. The *Halcyon* Court declined to permit contribution in part because the Court was not "wholly convinced that it would best serve the ends of justice." 342 U.S. at 285. While subsequent developments have confirmed the Court's wisdom, we should keep constantly in mind that our concern must be with the rights and obligations of longshoremen, stevedores, shipowners, stevedoring companies and others directly affected in the maritime field, for it is their interests, and not the interests of yardmen and railroads, that will be adversely affected by an overturning of *Halcyon* in the context of this case.

Halcyon was preceded by *Seas Shipping Co.* v. *Sieracki, supra.* There, this Court extended the shipowner's obligation of seaworthiness to longshoremen as well as to seamen.[22] The shipowner was thus held liable to the longshoreman, despite a finding that the shipowner had not been negligent.[23] Longshoremen, who performed functions traditionally considered ship's work, were entitled to the same benefits which the

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[22] Sieracki, a longshoreman injured when a ship's boom broke, had sued the shipowner and the companies which had built the ship. The District Court found the shipowner not negligent but gave judgment against the shipbuilders for negligence. The Court of Appeals agreed that the shipowner was not negligent, but ruled that Sieracki could nonetheless recover for the ship's unseaworthiness. This Court affirmed but expressly noted that its decision did not affect possible shipowner rights against the shipbuilders, who were not parties in this Court.

[23] This points up an important parallel to the instant case, where any liability running against Erie, for whatever reason, would almost certainly be recovered from Atlantic by indemnity. See Subsection (e) below.

hazards of the service had conferred upon seamen;[24] one of those benefits was the remedy for unseaworthiness.

The shipowner's obligation of seaworthiness had long been liberally extended to seamen, who were considered "ward[s] of the admiralty."[25] The obligation had developed in large part from a recognition of the particular dangers inherent in ship's work,[26] as well as from a recognition that seamen were typically ill-equipped to bear the financial loss of their injuries. Grounded in these considerations, the warranty of seaworthiness was not limited by "conceptions of negligence."[27] For example, the shipowner's freedom from negligence is no defense, he cannot delegate his duty to protect against unseaworthiness, and he cannot avoid his responsibility by turning control of the ship over to a stevedoring company.[28] The *Sieracki* Court summarized:

> [The obligation of seaworthiness] is essentially a species of liability without fault analogous to

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[24] "[F]or injuries incurred while working on board the ship in navigable waters the stevedore is entitled to the seaman's traditional and statutory protections, regardless of the fact that he is employed immediately by another than the owner." 328 U.S. at 99; footnote deleted.

[25] *E.g., Mahnich* v. *Southern S.S. Co.*, 321 U.S. 96, 103 (1944); *The Osceola*, 189 U.S. 158 (1903).

[26] *E.g., Seas Shipping Co.* v. *Sieracki, supra; Krey* v. *United States*, 123 F.2d 1008 (2d Cir. 1941).

[27] *Seas Shipping Co.* v. *Sieracki, supra*, 328 U.S. at 94.

[28] *Crumady* v. *The Joachim Hendrik Fisser, supra*, 358 U.S. at 427; *Italia Societa* v. *Oregon Stevedoring Co., supra*, 376 U.S. at 317 n.3; *Moragne* v. *States Marine Lines, Inc., supra*, 398 U.S. at 399.

> other well known instances in our law. Derived from and shaped to meet the hazards which performing the service imposes, the liability is neither limited by conceptions of negligence nor contractual in character. *** It is a form of absolute duty owing to all within the range of its humanitarian policy. [328 U.S. at 94-95.[29]]

To reiterate, in *Sieracki*, the longshoreman, injured due to the negligence of third parties, received an unseaworthiness award from the non-negligent shipowner. Moreover, under the Longshoremen's Act, Sieracki's employer recouped the compensation benefits under the Act from the money recovered from the shipowner.[30]

The *Halcyon* case followed directly from *Sieracki*. In *Halcyon*, the shipowner paid damages to Bačcile, a ship's carpenter employed by Haenn, for injuries sustained in a fall from defective stage planking provided by the ship.[31] Pursuant to instructions, the jury found that both Halcyon and Haenn had been negligent

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[29] The Court further distinguished unseaworthiness liability from negligence liability:

> That liability [for unseaworthiness] * * * rests upon an entirely different basis from that upon which recovery has been had against the * * * [shipbuilders who were negligent]. Such a liability therefore * * * [is] not joint but several * * *. [328 U.S. at 89.]

[30] *In re Sheffield Tankers Corp.*, 222 F. Supp. 441 (N.D. Cal. 1963) (right to reimbursement read into Section 33 of the Act, 33 U.S.C. § 933, which does not explicitly provide therefor); *The Etna*, 138 F.2d 37 (3d Cir. 1943).

[31] Baccile had sued the shipowner, Halcyon, which impleaded Haenn. Halcyon settled with Baccile, and the trial determined Halcyon's rights vis-a-vis Haenn.

and apportioned negligence.[32] The defective staging constituted unseaworthiness irrespective of negligence, however, for as the Court had noted in *Sieracki,* the obligation is "essentially a species of liability without fault." 328 U.S. at 94.[33] This Court denied contribution.

The *Halcyon* result, of course, was that the shipowner had to bear the entire burden of an unseaworthy condition despite a finding that third-party negligence was 75% responsible for the injury. Moreover, the employer of the injured worker, there the negligent third party, recouped benefits paid to the worker under the Longshoremen's Act.

The refusal to permit contribution was necessary to protect an important principle in *Sieracki*—that a shipowner's obligation of seaworthiness cannot be shared with or delegated to other parties. So long as the injured person is performing ship's work, the obligation is absolute. In *Sieracki,* the shipowner could not parcel its liability out to the negligent shipbuilders. By the same token the shipowner's duty in *Halcyon* was not to be diluted by third-party negligence. As the Court stated in *Sieracki,* "the obligation of seaworthiness * * * is peculiarly and exclusively the obligation of the owner. It is one he cannot delegate." 328 U.S. at 100.

In *Ryan Stevedoring Co.* v. *Pan-Atlantic Steamship Co., supra,* the Court placed the ultimate burden of an unseaworthy condition upon the most respon-

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[32] *Baccile* v. *Halcyon Lines,* 89 F.Supp. 765 (E.D. Pa. 1950).

[33] See also *Mitchell* v. *Trawler Racer, Inc.,* 362 U.S. 539 (1960). Parenthetically, the trial court's instructions accurately described the standards of the seaworthiness duty.

sible party. As in *Halcyon,* the *Ryan* shipowner had been forced under *Sieracki* initially to pay damages to a longshoreman injured by unseaworthiness resulting from negligence actively caused by the longshoreman's employer, a stevedoring company. In *Ryan,* however, this Court required the stevedoring company fully to indemnify the shipowner, whose liability had resulted from the stevedore's breach of a warranty of workmanlike service.

The Court characterized the warranty as "of the essence of" the stevedoring contract and compared it to a "manufacturer's warranty of the soundness of its manufactured product."[34] An apparent obstacle, the Longshoremen's Act, was no bar, since the duty to indemnify the shipowner did not flow from the injured longshoreman but instead was the result of a separate contractual agreement between the stevedoring company and the shipowner.[35] *Halcyon* also was no obstacle, since that case prohibited a claim for contribution from one tortfeasor to another and did not bar a right to indemnity.

The warranty's status as a contractual duty became suspect, however,[36] and the true rationale of *Ryan,* as

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[34] 350 U.S. at 133-134. The same comparison has been made in other cases. *E.g., Crumady* v. *The Joachim Hendrik Fisser, supra,* 358 U.S. at 428-429; *Italia Societa* v. *Oregon Stevedoring Co., supra,* 376 U.S. at 318-319.

[35] 350 U.S. at 130-132. The Court further noted:

> A like result [indemnity] occurs where a shipowner sues, for breach of warranty, a supplier of defective ship's gear that has caused injury or death to a longshoreman using it in the course of his employment on shipboard. [*Ibid.*]

[36] In one departure from contract principles, *Crumady* v. *The Joachim Hendrik Fisser, supra,* the shipowner recovered on the warranty even though there was no privity of contract between

well as its relationship to *Sieracki* and *Halcyon*, became evident in Mr. Justice White's opinion for the Court in *Italia Societa* v. *Oregon Stevedoring Co., supra.* In that case, the stevedoring company was required to indemnify the shipowner for unseaworthiness liability due to a latent defect in equipment furnished by the stevedoring company. Found not negligent, the stevedoring company was nonetheless held liable because it had violated its warranty of workmanlike service. Significantly, the Court explicitly adopted the seaworthiness standard in defining the scope of the stevedoring company's obligation[37] and reasoned as follows:

> It is considerations such as these [opportunity to test, etc.] that underlie a manufacturer's or a seller's obligation to supply products free of defects and a shipowner's obligation to furnish a seaworthy vessel. They also serve to render a tort standard of negligence inapplicable to the stevedore's liability under its warranty of workmanlike service. *For they illustrate that liability should fall upon the party best situated to adopt preventive measures and thereby to reduce the likelihood of injury.* [376 U.S. at 323-324; emphasis added; footnote deleted.]

The Court also observed that this area of personal injury litigation is governed by

> rules that are designed to minimize the hazards encountered by seamen, to compensate seamen for

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shipowner and stevedore. See also *Waterman S.S. Corp.* v. *Dugan & McNamara, Inc., supra.* The contractual rationale for the warranty was attenuated further in *Reed* v. *The Yaka, supra,* where the Court characterized the *Ryan* result in unmistakable tort warranty terms. 373 U.S. at 414.

[37] 376 U.S. at 322 (quoting from *Mitchell* v. *Trawler Racer, Inc., supra,* 362 U.S. at 550).

> accidents that inevitably occur, and *to minimize the likelihood of such accidents.* [376 U.S. at 324; emphasis added.]

This emphasis upon liability resting on the party best able to prevent the unseaworthy condition has been reiterated on several occasions. In *Reed* v. *The Yaka, supra,* for example, the shipowner *pro hac vice* was held liable to the injured longshoreman for unseaworthiness despite the fact that it was also the longshoreman's employer and subject to Section 5 of the Longshoremen's Act. Like the stevedore in *Ryan,* the shipowner *pro hac vice* in *Reed* had supplied the cause of the injury—a defective pallet. Noting this similarity, the Court observed:

> In either case, under *Ryan,* the burden ultimately falls on the company whose default caused the injury. [373 U.S. at 414.]

And more recently, in *Federal Marine Terminals, Inc.* v. *Burnside Shipping Co., supra,* Mr. Justice Stewart held for a unanimous Court that where the shipowner had failed to protect a deep tank opening into which a stevedore fell to his death, the stevedoring company could recover from the shipowner. The basis for recovery was indemnity, for the shipowner had violated its duty to provide a safe place to work. In so holding, Mr. Justice Stewart pointed out that the Court had recognized the objective of placing the ultimate burden on the party who caused the injury. 394 U.S. at 420 n. 22.

To summarize, *Sieracki* and *Halcyon,* by extending the warranty of seaworthiness, ensured that the injured worker will be fully compensated.[38] In appropriate instances, however, the *Ryan* warranty permits

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[38] This recovery is further guaranteed by the fact that the ship must respond *in rem* to an unseaworthiness liability. *Reed* v. *The Yaka, supra.*

a shift of liability from the shipowner (accountable for unseaworthiness) to the stevedoring company, but only when the stevedoring company is the party better-positioned to prevent the injury. The objective is attained:

> [T]he burden ultimately falls on the company whose default caused the injury.[39]

This system for shifting liability,[40] all premised upon the shipowner's initial responsibility, applies also where the third party is not a stevedoring company. In *Simpson Timber Co.* v. *Parks, supra,* for example, the shipowner, liable for unseaworthiness, recovered indemnity from the manufacturer of doors which were negligently packaged and which created the unseaworthy condition. The Court, refusing to permit the negligent manufacturer to benefit from the faultless shipowner's nondelegable duty of seaworthiness, added this significant comment:

> Moreover, by imposing ultimate liability upon the negligent manufacturer, the loss is placed upon the actor whose default caused the injury. *The one best able to eliminate the risk is given the greatest incentive to do so.* [390 F.2d at 356; emphasis added.]

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[39] *Reed* v. *The Yaka, supra,* 373 U.S. at 414.

[40] The shipowner is not always indemnified, however. *E.g., Vaccaro* v. *Alcoa Steamship Co.,* 405 F.2d 1133 (2d Cir. 1968); *Quadrino* v. *S.S. Theron,* 323 F.Supp. 1037 (S.D.N.Y.), *aff'd,* 436 F.2d 959 (2d Cir. 1970). Indeed, an "active-passive" standard has developed, under which an actively negligent shipowner cannot recover from a third party, *e.g., Humble Oil & Refining Co. v. Naquin,* 414 F.2d 912 (5th Cir. 1969); see *Halliburton Co.* v. *Norton Drilling Co.,* 302 F.2d 431 (5th Cir. 1962), *cert. denied,* 374 U.S. 829 (1963), nor can an actively negligent third party, including a stevedoring company, defeat indemnity by reason of passive or secondary negligence of the shipowner. *E.g., Tri-State Oil Tool Indus.* v. *Delta Marine Drill Co.,* 410 F.2d 178 (5th Cir. 1969); *Nikiforow* v. *Rittenhouse,* 319 F.Supp. 697 (E.D. Pa. 1970).

The Second Circuit Court of Appeals has also aptly described the *Sieracki-Ryan-Simpson Timber* system of loss allocation and its salutary purpose of inducing precaution:

> The function of the doctrine of unseaworthiness and the corollary doctrine of indemnification is allocation of the losses caused by shipboard injuries to the enterprise, and within the several segments of the enterprise, to the institution or institutions most able to minimize the particular risk involved. [*De Gioia* v. *United States Lines Co.*, 304 F. 2d 421, 426 (2d Cir. 1962). And see *Ferrigno* v. *Ocean Transport Ltd.*, 309 F. 2d 445 (2d Cir. 1962).]

This system of initial shipowner liability under *Sieracki*, with indemnification where appropriate from third parties under *Italia Societa*, *Simpson Timber* and other cases, is fundamentally incompatible with the recognition of a right to contribution. Indeed, the very structure of the system—initial liability with subsequent rights to indemnification—is premised upon the fact that *Halcyon* precludes contribution. This is illustrated, as noted above, by the regularity with which this Court has, in the process of refining and developing the *Sieracki* and *Ryan* doctrines and their interplay, noted the distinction between the indemnity provided in *Ryan* and the contribution prohibited by *Halcyon*. *Halcyon* was inevitable after *Sieracki*, and *Ryan* followed directly from *Halcyon*. Overturning *Halcyon* would thus immediately and fundamentally jeopardize a system on which all interests in the industry have depended since *Ryan*, and which Congress has apparently sanctioned as well.

Atlantic suggests that *Halcyon* has worked "manifest injustice." Assuming, however, that *Halcyon* is

the only bar to contribution in this case and in the typical *Ryan* situation, a rule permitting contribution would be peculiarly ill-suited to the maritime personal injury area. As we have seen, *Ryan* and its progeny place ultimate liability on the party best able to take precaution against accidents. *Sieracki,* built upon the premise that the industry is a hazardous one,[41] also requires that the ultimate burden, once placed where it should be, must not be diluted or shared, as would be the effect if not the purpose of contribution. This objective is well-served by a rule making the party best situated to prevent accidents pay the entire cost of those that occur. In such a fashion, the "super-care"[42] critical in a hazardous industry can best be achieved.

In the instant case, Erie was only one of 49 railroads that had had the defective boxcar in its possession during the two-year period when the defects should have been obvious. All 49 railroads had a duty to inspect the boxcar and correct the defects. But the fact remains that it was the owner of the boxcar, Atlantic, which had the greatest opportunity, the most manifest duty, and presumably the greatest incentive to inspect and correct. Not only did Atlantic have the car in its possession eight times during this period—more than any other railroad but one (the Pennsylvania Railroad)—but the testimony demonstrated Atlantic's primary duty, as the owner of the boxcar,

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[41] As the Court so recently noted in *Victory Carriers, Inc.* v. *Law, supra,* 40 U.S.L.W. at 4063 n.15, a survey has concluded that the stevedoring occupation had the highest injury frequency rate of the high-hazard industries studied.

[42] See Proudfoot, "The Tar Baby": Maritime Personal-Injury Indemnity Actions, 20 Stan. L. Rev. 423, 445 (1968).

to take special care that not only particular defects but normal excessive wear be corrected. As stated by one expert whose experience as railway car inspector and supervisor of inspectors for the New York Central Railroad spanned over 40 years (A-23-24):

> If you are trying to ask me what our practices were in accepting our own cars back in interchange, what the inspection consisted of, is this what you want to know?
>
> Q. That is exactly what I want to know.
>
> A. Well, primarily all the inspections are identical. When we hit our own home cars we look for cardable damage, cardable damages is an expression where someone is responsible for damages to your equipment that has not been repaired or reported.
>
> We look for these defects to protect our own company, and we also look for normal excessive wear that might in the near future, cause our car to be cut out. We like to send them to our own shops and repair them. The reason for this is on repair tracks we open the doors, the cars are empty, we examine the interior, sometimes we repair the flooring, the side lining to keep the cars in good condition.
>
> There is a type of repair and maintenance that is not normally done on other railroads, but all the inspections are the same. [A-33-34.]

Surely, to dilute the responsibility of the owner of the defective boxcar under circumstances such as these would not be in the interest of either railroad or maritime safety. To require contribution from Erie—and ultimately, perhaps, from all other railroads that fail to discover and correct defects—would take away the very incentive that this Court has so carefully attempted to impose over the years in its various decisions. The party "best able to eliminate the risk"

would be in part rewarded for its failure to do so, much as if a shipowner were able to contract away part of his duty to provide a seaworthy ship.

Conceptually as well as practically, contribution is ill-suited to a maritime personal injury action. The keystone of such actions, of course, is the obligation of unseaworthiness, which is absolute[43] and unbounded by negligence principles.[44] Consequent rights of indemnification are similarly unrestricted, and shipowner negligence does not necessarily preclude indemnity.[45] As this Court has observed, however, contribution is keyed to notions of negligence, not allocations of risk:

> Recovery in contribution is imposed by law and is measured by the relative fault of the joint tortfeasors or shared equally between them.[46]

If shipowners' and stevedores' liabilities were measured solely by negligence-fault principles, then perhaps contribution would appropriately serve to divide losses due to joint and mutual fault with respect to the injured worker. But such liabilities are not measured that way, and neither would Erie's be here. Instead,

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[43] *E.g., Mitchell* v. *Trawler Racer, Inc., supra.* See also p. 19, *supra.*

[44] While most shipowner negligence creates an unseaworthy condition, the converse is not true, and negligence and unseaworthiness have been recognized as independent grounds of recovery which lead to different results. *E.g., Weyerhaeuser* v. *Nacirema Operating Co.*, 355 U.S. 563 (1958); *Lusich* v. *Bloomfield S.S. Co.*, 355 F.2d 770 (5th Cir. 1966).

[45] *Italia Societa* v. *Oregon Stevedoring Co., supra* (stevedore as indemnitor); *Tri-State Oil Tool Indus.* v. *Delta Marine Drill Co., supra* (secondarily negligent shipowner recovers).

[46] *Italia Societa* v. *Oregon Stevedoring Co., supra,* 376 U.S. at 321.

the respective liabilities are determined by entirely different considerations, which are ultimately intended to induce "super-care" in a hazardous enterprise. The Court has made this point quite clear, and it needs no further elaboration:

> [R]ecovery of contribution between joint tortfeasors and recovery of indemnity for breach of warranty proceed on two wholly distinct theories and produce disparate results.[47]

(c) The Longshoremen's Act precludes contribution.

Atlantic contends that the Fifth Circuit has read *Halcyon* to prevent contribution only where the tortfeasor from whom contribution is sought is protected from suit by a statute.[48] Even assuming that the Fifth Circuit view is correct—which it is not (see p. 11, *supra*)—Erie nevertheless meets the Fifth Circuit test because of Section 5 of the Longshoremen's Act, 33 U.S.C. § 905. This section provides in pertinent part:

> *The liability of an employer* prescribed in section 904 of this title *shall be exclusive and in place of all other liability of such employer to* the employee, his legal representative, husband or wife, parents, dependents, next of kin, and *anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death* * * *. [Emphasis added.]

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[47] *Italia Societa* v. *Oregon Stevedoring Co., supra*, 376 U.S. at 321.

[48] *Horton & Horton, Inc.* v. *T/S J. E. Dyer, supra*; see also *In re Seaboard Shipping Corp. and Moran Inland Waterways Corp.*, N.Y.L.J. Oct. 8, 1971, p. 1 (2d Cir. Sept. 29, 1971). In effect, this view completely discards *Halcyon*, since basic principles of contribution would preclude contribution from such a "protected" tortfeasor.

This Court did not have to reach the question in *Halcyon* as to whether this provision prohibits contribution between an employer and a shipowner, because it held that no such right to contribution exists in non-collision cases. However, the Court would have to face that issue in the instant case if it were disposed to rule that the right to contribution were otherwise available.

We submit that, for at least two reasons, Section 5 prohibits the payment of contribution from Erie to Atlantic in this case.

First, the statutory language is clear and unambiguous. It makes compensation payments under the Longshoremen's Act the "exclusive" liability and "in place of all other liability" not only to the employee but to anyone else "otherwise entitled to recover damages * * * on account of such injury or death * * *." The purpose was clear. In doing away with all normal defenses and making the employer's duty an absolute one to pay compensation, regardless of fault, the Act granted a *quid pro quo:* freedom from liability *other than* compensation payments.

Erie, an employer subject to the Longshoremen's Act, has had to make—and has made—compensation payments to the injured Beriazet, regardless of Erie's negligence.[49] Having done so, under the clear terms of the Act, Erie cannot be forced to pay additional damages to Atlantic where, as here, there was no indemnity situation.

There is a second reason why the Act prohibits contribution. Like the employer in *Halcyon,* from whom contribution was sought, Erie is statutorily insulated

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[49] *Pope & Talbot, Inc.* v. *Hawn, supra.*

from a negligence action by its employee, Benazet.[50] As the Fifth Circuit has stated:

> [T]he Act's exclusive liability provision effectively abrogates any independent tort liability of the employer to its employees * * *.[51]

Even assuming contribution is permitted in admiralty, contribution requires mutual liability to the injured party by joint tortfeasors.[52] Since Erie is not answerable in negligence to its employee, it cannot be a joint tortfeasor with a negligent third party.

In *American Mutual Liability Ins. Co.* v. *Matthews, supra,* decided prior to *Halcyon,* the shipowner sought contribution from the stevedoring firm which employed the injured longshoreman. Contribution was denied on the following rationale:

> [T]he statute exempts the employer from any duty to pay damages for negligently injuring his employee and substitutes therefor an absolute duty to pay the prescribed compensation. For a right of contribution to exist between tort-feasors, they must be joint wrongdoers in the sense that their tort or torts have imposed a common liability upon them to the party injured. In the case at bar the shipowner and the stevedoring firm were not under a common liability to the injured em-

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[50] 33 U.S.C. § 905; *Crawford* v. *Pope & Talbot, Inc.,* 206 F.2d 784 (3d Cir. 1953); *American Mutual Liability Ins. Co.* v. *Matthews,* 182 F.2d 322 (2d Cir. 1950).

[51] *Ocean Drilling & Exp. Co.* v. *Berry Bros. Oilfield Ser.,* 377 F.2d 511, 514 (5th Cir.), *cert. denied,* 389 U.S. 849 (1967). Ruling that the Act prevented indemnification on a tort theory, the court also noted that *Halcyon* barred contribution.

[52] See, *e.g., Simpson Timber Co.* v. *Parks, supra; Amerocean S.S. Co.* v. *Copp, supra.*

> ployee, nor were they joint wrongdoers. His claim against his employer was not for damages, as was his claim against the shipowner, nor was it dependent upon any tort committed by his employer. Consequently the shipowner can have no right to contribution based on the theory that they were joint tort-feasors. [182 F.2d at 323; footnote deleted.]

Under this reasoning, which has been approved by this Court,[53] Erie cannot be deemed a joint tortfeasor subject to claims for contribution because joint tortfeasor status presumes potential mutual liability. Any possible mutual liability here would be for negligence, but negligence liability for Erie has been abolished by the Act in favor of its absolute duty to pay compensation benefits. Since Erie cannot be directly liable to Benazet for negligence, it cannot be held indirectly liable through a contribution claim by Atlantic.

Reed v. *The Yaka, supra,* and *Jackson* v. *Lykes Bros. S. S. Co., supra,* do not change this result. In these cases, the Court held that a longshoreman's remedy for unseaworthiness is not defeated by the fact that the shipowner is also the longshoreman's employer. The exclusive liability feature of the Act does not insulate a shipowner-employer from unseaworthiness liability. Noting the "dominant intent of Congress to help longshoremen," the Court would not uphold a construction of the Act which would withdraw unseaworthiness recovery from a longshoreman simply because the shipowner happened to be his

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[53] See *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Co., supra,* 350 U.S. at 133.

employer.[54] This would be an "incongruous, absurd, and unjust result." *Jackson* v. *Lykes Bros. S.S. Co., supra,* 386 U.S. at 735.

Atlantic, assuming that *Halcyon* applies only when the potential contributor is protected from suit,[55] and assuming also that Atlantic's defective boxcar rendered Erie's carfloat unseaworthy,[56] contends that the *Reed* and *Jackson* cases remove any bar to contribution. Atlantic urges that since the Act thus did not affect Erie's *unseaworthiness* liability to Benazet, Erie was a "joint tortfeasor" and thus was properly subject to a contribution claim.

This argument is without merit. Potential Erie liability for unseaworthiness to Benazet did not make it a joint tortfeasor with a negligent Atlantic. In *Simpson Timber Co.* v. *Parks, supra,* the negligent manufacturer contended that the shipowner's liability for unseaworthiness made it and the manufacturer

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[54] The Court confirmed an earlier statement that the Act "must be liberally construed in conformance with its purpose, and in a way which avoids harsh and incongruous results." *Reed* v. *The Yaka, supra,* 373 U.S. at 415 (quoting from *Voris* v. *Eikel,* 346 U.S. 328, 333 (1953)).

[55] This assumption is erroneous, as we have shown.

[56] The warranty of seaworthiness extends to "appliances appurtenant to the ship." *The Osceola, supra,* 189 U.S. at 175. While the obligation has been broadly construed, *e.g., Gutierrez* v. *Waterman Steamship Co.,* 373 U.S. 206 (1963), it is not without limit. *Morales* v. *City of Galveston,* 370 U.S. 165 (1962). Indeed, under *Victory Carriers, Inc.* v. *Law, supra,* there may be some question whether the boxcar was an "appliance appurtenant" to the carfloat. Of course, the issue of unseaworthiness is a question of fact for the jury. E.g., *Mahnich* v. *Southern S.S. Co., supra; Blier* v. *United States Lines Co.,* 286 F.2d 920 (2d Cir.), *cert. denied,* 368 U.S. 836 (1961).

joint tortfeasors, thereby precluding the shipowner's claim for indemnity. The court did not agree. The court ruled that the shipowner and the negligent third party were not joint tortfeasors, stressing that unseaworthiness liability was not restricted by principles of fault or negligence. As we have shown earlier, unseaworthiness and negligence liabilities are different in character and lead to different and disparate results. Treating them the same to permit contribution would produce "manifest injustice" by defeating various actions, including those for indemnity by non-negligent shipowners against negligent third parties.

The purpose of *Reed* and *Jackson* was to avoid an unjust denial of unseaworthiness benefits to a group of longshoremen. Holding only that the Act was no bar to unseaworthiness recovery, *Reed* and *Jackson* did not open the way to employers' negligence liability to employees, which would be the effect of a contribution award. More specifically, *Reed* and *Jackson* might possibly have made Erie liable to Benazet for unseaworthiness, but they did not otherwise affect Section 5 of the Act, which still protects Erie both from liability to Benazet for negligence and from contribution based on negligence in favor of Atlantic.

A recent Court of Appeals case is instructive. In *Mendez* v. *States Marine Lines, Inc.*, 421 F.2d 851 (3d Cir.), *cert. denied*, 398 U.S. 959 (1970), the deceased drowned in a collision between a ship and a launch, both found to be negligent.[57] The shipowner sought contribution from the deceased's employer, which had hired the launch (an independent contractor). Under

[57] Since a collision was involved, the *Halcyon* rule did not bar contribution.

the Jones Act, the launch's negligence would be attributed to the employer, since the employer (also a shipowner) was obligated to give crewmen safe transport to and from the ship. It did not follow, however, that the launch's negligence would be similarly attributed to the employer for purposes of a contribution claim. As the court stated:

> The Jones Act was enacted for the benefit of seamen. * * * The Jones Act was *not* designed to extend ship owner's liability regarding other ship owners. [421 F. 2d at 853; emphasis in original.]

By the same token, while *Reed* and *Jackson* extended the unseaworthiness remedy to longshoremen employed by shipowners, they did not confer new rights on negligent *third* parties seeking contribution.

A use of potential unseaworthiness liability under *Reed* and *Jackson* to permit contribution for negligence would require an unprecedented disregard for Section 5 of the Longshoremen's Act. No decision before or since *Halcyon* even suggests that the Court should on this occasion disregard the clear meaning of the Act. The effect of *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Co., supra,* may have been to expose the stevedoring company to liability in addition to compensation under the Act, but that liability resulted from a contractual relationship with the shipowner which was unaffected by the Act:

> While the Compensation Act protects a stevedoring contractor from actions brought against it by its employee on account of the contractor's tortious conduct causing injury to the employee, the contractor has no logical ground for relief from the full consequences of its independent contractual obligation, voluntarily assumed to the

shipowner, to load the cargo properly. [350 U.S. at 131.]

Similarly, in *Reed* and *Jackson*, the Court subordinated a literal reading of the statute to two important humanitarian objectives of maritime personal injury law: (1) the preservation of the absolute and nondelegable character of the seaworthiness duty, and (2) the extension of the seaworthiness remedy to all who do ship's work. Here, unlike *Ryan*, there is no relationship, contractual or otherwise, which gives Atlantic a right to indemnity from Erie. Indeed, Atlantic abandoned a claim for indemnity from Erie, and the District Court ruled that the evidence showed Atlantic not entitled to indemnity. A-86. Moreover, since Benazet has received full compensation for his injuries, no incongruous result or other policy reason exists, as in *Reed* and *Jackson*, to subordinate the wording of the Act for a humanitarian result.[38]

That this is the correct interpretation of the Court's cases to date is demonstrated by *Italia Societa* v. *Oregon Stevedoring Co., supra.* Although the Court allowed a shipowner indemnity from an employer-stevedoring company on a breach of warranty for supplying defective, injury-producing equipment, the Court went out of its way to distinguish, on at least two different grounds, indemnity recovery for breach of warranty and contribution due to negligence liability. Any negligence liability of the employer is based upon its obligation to the employee and is thus specifically barred by the Longshoremen's Act, whereas the stevedoring company's warranty is totally separate

[38] *Weyerhaeuser S.S. Co.* v. *United States, supra*, stressed by Atlantic, is inapposite. There, the statutory language, far from clear, was construed so as to avoid conflict with the age-old admiralty divide-damages rule for collisions.

from any obligation it owes to its employee.[59] And, as seen in *Simpson Timber Co., supra,* a shipowner's liability for unseaworthiness cannot be equated with negligence for contribution purposes.

(d) Since Erie could obtain indemnity from Atlantic, contribution is pointless.

Atlantic would bear the ultimate liability if this case, like most cases of shipboard injury, had been tried as a maritime case from the beginning. Benazet, the injured party, would have sued Erie, the owner of the carfloat, alleging that Atlantic's defective boxcar made the carfloat "unseaworthy."[60] As Benazet's employer, Erie would be protected by the Longshoremen's Act from negligence liability, but possibly could be subjected to liability for unseaworthiness without regard to negligence.[61]

Like the shipowner in countless other cases, Erie would, by impleading Atlantic, then shift its liability to the party responsible for the unseaworthy condition. As we have seen, the jury found Atlantic negligent in failing to discover and repair its boxcar's defective brake and brake platform, and the District Court specifically found that there was no intervening cause of the accident.

Under the cases, Atlantic's liability in indemnity would have been clear. In *Simpson Timber Co.* v.

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[59] If we are wrong in our interpretation of the cases, we respectfully urge the Court to adopt the reasoning of Mr. Justice Stewart's dissent, joined by Mr. Justice Harlan, in *Jackson* v. *Lykes Bros. S.S. Co., supra,* 386 U.S. at 736. The Longshoremen's Act clearly prohibits a contribution recovery against the employer.

[60] As we have noted, whether or not Atlantic's boxcar rendered the carfloat unseaworthy is a question of fact.

[61] *Jackson* v. *Lykes Bros. S.S. Co., supra; Reed* v. *The Yaka, supra.*

Parks, supra, a longshoreman, injured due to defective packaging of a bundle of doors, sued the shipowner alleging unseaworthiness. (In maritime terms, Atlantic's boxcar may have been "defective packaging.") The shipowner, held liable for unseaworthiness, recovered indemnity from the manufacturer of the doors, who was found negligent.

The jury finding of Erie negligence, based on an instruction framed according to contribution principles, would not preclude indemnity. In admiralty, "passive" negligence does not bar an award of indemnity from a third party whose negligence is "active," "primary," or "affirmative."[22] As the Fifth Circuit has observed, "The active-passive distinction, when made, usually contrasts the conduct of one who simply had custody of the cause of injury and failed to discover the danger created by another." *Watz* v. *Zapata Off-Shore Co.,* 431 F.2d 100, 120 (5th Cir. 1970). While the jury here answered affirmatively when asked if Erie's negligence was "a substantial factor" in bringing about Benazet's injuries, it was not asked and did not find whether Atlantic's negligence was also substantial, much less whether such negligence was more substantial than Erie's.

Under maritime law, Erie's negligence was clearly the "passive," and Atlantic's the "active", force at work. Therefore, Atlantic would indemnify Erie for any payment to Benazet resulting from defects in the boxcar. This being so, justice would

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[22] See n. 40, *supra.* Different principles produce equivalent results in the area of "contractual" indemnity, as by the stevedoring company. *Weyerhaeuser S.S. Co.* v. *Nacirema Operating Co.,* *supra,* 355 U.S. at 569); *Italia Societa* v. *Oregon Stevedoring Co.,* *supra,* 376 U.S. at 320; *Federal Marine Terminals, Inc.* v. *Burnside Shipping Co., supra,* 394 U.S. at 420.

clearly not be served by allowing Atlantic to escape its burden of ultimate liability by the simple fortuity that admiralty jurisdiction was not fully recognized until after the trial was almost over. Even more to the point, if the Court were to hold that contribution is available, Erie would be entitled to a new trial with proper jury instructions and jury findings so that the indemnity issue could be resolved. In view of the almost certain outcome on the admitted facts, making contribution available in this case would be an empty gesture.[63]

3. State law is inapplicable.

Atlantic argues in the alternative for a ruling that the New Jersey Joint Tortfeasors Contribution Law should be applied to permit contribution from Erie. This contention must be rejected.

First, admiralty will adopt state law only where no maritime rule exists.[64] Here, of course, an established rule does exist. As the Court of Appeals recog-

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[63] Even if Erie were not entitled to a new trial on the issues of indemnity, it would be entitled to such a new trial if this Court were to adopt the "relative degree of fault" test for determining the amount of contribution which Erie owed Atlantic, since a jury would have to decide the amount owed by each. See *Halcyon Lines* v. *Haenn Ship Ceiling & Refitting Corp.*, *supra*, 342 U.S. at 283, 286-287. This, however, is not the only choice open to the Court if *Halcyon* is overruled. It could adopt a 50-50 split between Atlantic and Erie (*id.* at 284 n.5, 286-287), or some other form of split. *E.g.*, *id.* at 283, 286-287. There would also be the question whether Erie could deduct from the amount it owed in contribution the compensation payments it has made to Benazet under the Longshoremen's Act. See *Pope & Talbot, Inc.* v. *Hawn*, *supra*, 346 U.S. at 411-412. Each of these are difficult questions which have not been fully briefed or argued by either Atlantic or Erie.

[64] *E.g.*, *Hess* v. *United States*, 361 U.S. 314 (1960); *Wilburn Boat Co.* v. *Firemen's Fund Ins. Co.*, *supra*.

nized, *Halcyon* "squarely held there is *no right of contribution* among tort feasors in a non-collision case." A-99; emphasis by the Court.

Second, since the *Halcyon* rule underpins the entire legal system of maritime personal injury litigation, any change in the rule *must* apply with uniformity. However destructive a change in *Halcyon* might be, the possibility of applying 50 different contribution rules would create extreme confusion. This Court has repeatedly stressed that in maritime matters there must be uniformity in the rules applied, regardless of where the case is brought.[65] As the Court said in *Knickerbocker Ice Co.* v. *Stewart,* 253 U.S. 149, 160 (1920):

> The Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law and empowered Congress to legislate in respect of them and other matters within the admiralty and maritime jurisdiction. Moreover it took from the States all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law or to interfere with its proper harmony and uniformity in its international and interstate relations.

Even more to the point, the Court in *Pennsylvania R.R. Co.* v. *O'Rourke, supra,* 344 U.S. at 337, specifically rejected the idea that a state could enact statutes governing compensation for injuries on navigable water, and in *Italia Societa* v. *Oregon Stevedoring Co., supra,* 376 U.S. at 324, it rejected state law precepts because

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[65] *E.g., Carlisle Packing Co.* v. *Sandanger,* 259 U.S. 255, 259 (1922); *Chelentis* v. *Luckenbach S.S. Co.,* 247 U.S. 372, 384 (1918); *Southern Pacific Co.* v. *Jensen,* 244 U.S. 205, 215 (1917).

the suit was for indemnification based upon a maritime contract, "governed by federal law." [66]

Nothing could be more destructive of federal uniformity in the maritime field than the result sought by Atlantic. In the present case, for example, if the accident had happened on the New York rather than the New Jersey side of the New York harbor, New York law would have denied Atlantic any right to contribution because of the absence of a joint judgment. New York Civil Practice Law and Rules, § 1401. An accident happening on different sides of the same navigable waters would thus lead to disparate conclusions on the right of a party to contribution and to great confusion in an area of the law which uniquely calls for harmony and uniformity. Not only do state laws vary widely (see Prosser, *Law of Torts*, 275 *et seq.* (3d ed. 1964)), but many actions would enmesh the federal courts in troublesome disputes as to the location of accidents-in-transit for purposes of determining which state law controlled, and all of the current problems with the application of conflicts of law would be introduced into a large number of suits.

Finally, both the District Court and the Court of Appeals concluded, after a review of New Jersey law, that state law would not permit contribution here. A-91-92, 99.[67] Both courts are "constantly required to

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[66] See also *Moragne* v. *States Marine Lines, Inc.*, *supra*, 398 U.S. at 401-402; *Seas Shipping Co.* v. *Sieracki*, *supra*, 328 U.S. at 88 (and cases there cited); *Pope & Talbot, Inc.* v. *Hawn*, *supra*, 346 U.S. at 409-411; *Kermarec* v. *Compagnie Generale Transatlantique*, *supra*.

[67] The District Court and Court of Appeals both cited and relied on a 1954 decision of the New Jersey Appellate Division, *Farren* v. *New Jersey Turnpike Authority*, 31 N.J. Super. 356, 106 A.2d 752 (App. Div. 1954). It should be noted that that case has been

pass upon" New Jersey law questions, and, under traditional policies of this Court, their judgment should not be disturbed.[68]

CONCLUSION

The decisions below have produced a just and fair result. Benazet, injured by Atlantic's boxcar, has been fully compensated and is now back on the job.[69] Atlantic, found negligent, has not been permitted to pass the burden of its wrongdoing on to Erie. As the District Court specifically found, "* * * Atlantic was either the cause or knew or should have known of the defects in the brackets of the car it placed in commerce and * * * there was no superceding cause of the accident." A-81.

Like the shipowner in *Halcyon,* Atlantic here seeks a sweeping change in national maritime principles in order to "relieve itself of a part of its burden in this particular lawsuit." 342 U.S. at 286. It thereby ignores the fact that this Court's decisions have developed a comprehensive, efficient and familiar system for compensating shipboard injuries and allocating

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specifically cited with approval by the New Jersey Supreme Court. *Wellenheider* v. *Roder,* 49 N.J. 1, 5, 227 A.2d 329, 333 (1967). For a clear discussion of the reasons why New Jersey law would not allow contribution, see Judge Cooper's opinion below. A-91-92 n. 4.

[68] *Estate of Spiegel* v. *Commissioner,* 335 U.S. 701, 707-708 (1949).

[69] Through an understandable confusion over "Defendant" and "Third Party Defendant," Defendant's Exhibit A was mistakenly included in the Appendix instead of Third Party Defendant's Exhibit A. The correct exhibit, with Atlantic's permission, has been appended as Appendix B to this Brief. It shows the salary paid by Erie to Benazet for each month from January 1962 through March 1970.

losses therefrom. This system should not now be overthrown, particularly on the facts of a case whose maritime character was not recognized until too late accurately to formulate and present to the jury all of the pertinent issues.

What the Respondent in *Halcyon* told the Court nineteen years ago—and with which the Court apparently agreed—is even truer now than it was then:

> We suggest that judicial legislation * * * can lead only to chaos. If the scheme of things is to be changed, Congress should legislate. Piece by piece judicial legislation cannot solve the problem satisfactorily.[70]

We respectfully urge the Court to affirm the judgment below and leave the issue of contribution where the Court originally and correctly placed it: with the Congress.

Respectfully submitted,

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[70] Brief for Respondent, *Halcyon Lines & Vinke & Co.* v. *Haenn Ship Ceiling and Refitting Corp.*, Oct. Term 1951, No. 62, p. 17. Similarly, this Court in *Reed* v. *The Yaka*, *supra*, emphasized that many of the decisions discussed above "have been left unchanged by Congress." 373 U.S. at 414.

APPENDIX A

88TH CONGRESS
1ST SESSION

S. 555

IN THE SENATE OF THE UNITED STATES
January 28 (legislative day, January 15), 1963
MR. BARTLETT introduced the following bill; which was read twice and referred to the Committee on Commerce

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A BILL

To unify apportionment of liability in cases of collision between vessels, and in other maritime casualties.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, where a collision or other maritime casualty occurs, the compensation due for damages arising therefrom shall be settled in accordance with the following provisions:

SEC. 2. If the casualty occurs without fault, if it is caused by force majeure, or if the causes of the casualty cannot be determined, the damages shall be borne by those who have suffered them.

SEC. 3. If the casualty is caused by the fault of only one vessel, liability to make good the damages shall attach to the one which has committed the fault.

SEC. 4. (a) If the casualty is caused by the fault of two or more vessels, the liability to make good the damages shall be in the same proportion as the degree of fault: *Provided,* That if it is not possible to establish the degree of respective fault, or if it appears that the faults are equal, the liability shall be apportioned equally.

(b) In respect of damages caused by death or personal injury, liability shall be joint as well as several. When a vessel pays a larger part than that which in accordance with the provisions of subsection (a) hereof she ought ultimately to bear, she shall have the right of contribution for the excess.

(c) The damages to vessels, or to their cargoes, or to the effects or other property of the crews, passengers, or other persons on board shall be borne by the vessels in fault in accordance with the provisions of subsection (a) hereof without joint and several liability toward third parties and without right of contribution.

SEC. 5. The liability imposed by the preceding sections shall attach, in cases where the casualty is caused by the fault of a pilot, even when the carrying of a pilot is compulsory.

SEC. 6. The right of action for the recovery of damages resulting from a casualty shall not be conditional upon the entering of a protest or the fulfillment of any other special formality.

SEC. 7. The provisions of this Act shall not affect the liability under a contract of carriage or any contract; nor shall such provisions be construed as imposing any liability from which there is exemption by any contract or by any provision of law, or as affecting the right to limit liability in the manner provided by law.

SEC. 8. (a) Actions for the recovery of damages shall be barred after an interval of two years from the date of the casualty.

(b) Actions to enforce the right of contribution allowed by subsection (b) of section 4 shall be barred after an interval of one year from the date of payment.

(c) The court in which such actions are brought may extend such interval if it shall be satisfied that during such

period there had not been any reasonable opportunity of arresting the vessel involved within the jurisdiction of the court or within the territorial waters of the country in which the libelant resides or has his principal place of business.

SEC. 9. This Act shall apply to the liability to make good the damages caused or contributed to by any fault of a vessel even if no collision has actually taken place.

SEC. 10. This Act shall apply to the liability to make good the damages in all cases to which the admiralty and maritime jurisdiction of the United States extends. The liability to make good the damages shall be in the same proportion as the degree of fault respectively committed and shall apply in the same manner between any vessel or vessels and the owners or operators of any land structure, facility, or other property, or between other persons, as the rule is applied between vessels.

SEC. 11. This Act shall apply to actions in personam as well as to actions in rem.

SEC. 12. The last sentence of section 1 of the Act of September 4, 1890 (26 Stat. 425 (33 U.S.C. 367)) is hereby repealed.

SEC. 13. This Act may be cited as the "Collision Liability Apportionment Act, 1963". It shall apply only to causes of action arising after the date of its approval.

APPENDIX B

Third Party Defendant's Exhibit A

T. H. Benazet

Employee No. 46428

Social Security No. 150-16-1959

	1962	1963	1964	1965	1966
January	673.32	585.53	512.45	—	612.31
February	516.52	377.06	520.50	18.72	516.62
March	624.04	452.40	450.20	—	526.03
April	475.51	470.36	487.96	—	558.30
May	585.11	492.21	535.95	—	608.46
June	451.36	479.35	480.83	—	504.90
July	571.82	155.26	561.70	98.56	602.81
August	406.16	487.96	51.21	521.90	516.62
September	407.52	443.60	—	606.98	621.70
October	523.84	444.51	11.60	568.62	597.38
November	418.77	467.10	—	562.09	635.51
December	432.46	465.78	—	616.55	656.44
	6,086.43	5,321.12	3,612.40	2,993.42	6,957.08

	1967	1968	1969	1970
January	586.06	499.85	738.67	1,015.49
February	623.15	858.32	644.24	645.80
March	786.73	582.30	656.30	400.61
April	591.98	533.65	629.83	
May	602.03	620.43	693.72	
June	589.97	549.98	698.16	
July	642.78	613.33	768.59	
August	604.78	640.55	751.79	
September	641.16	654.34	1,113.04	
October	727.14	861.31	769.47	
November	634.24	716.78	808.52	
December	737.12	974.55	852.79	
	7,767.14	8,125.39	9,125.12	2,061.90